

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

F.A.O. NO. 1315 of 1992
Date of Decision: 27.9.2006

Smt.Chanchal Kapoor and others.

..... Appellants

Versus

Nirbhay Singh and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Jaswant Jain, Advocate for the appellants.
Shri Ravinder Arora, Advocate for respondent no.3.

....

Mahesh Grover,J.

This is an appeal by the claimants against award dated 29.5.1992 of Motor Accident Claims Tribunal, Rewari (hereinafter described as 'the Tribunal') passed in M.V.A. Case No. 73 of 1990.

In a motor vehicular accident, which took place on 5.8.1989, one Shri P.N.Kapoor, aged 42 years, lost his life while travelling in a bus belonging to the Rajasthan State Road Transport Corporation (for short, 'RSRTC').

The claimants, who were the widow, four minor children and widowed mother of the deceased, were awarded total compensation of

Rs.2,49,000/- along with interest at the rate of 12% per annum from the date of petition till the date of realisation.

Dis-satisfied with the award of the Tribunal, the claimants have preferred the present appeal.

Undisputedly, the deceased was an employee of Telephone Department at Jaipur and was getting Rs.2667/- per month as salary. The Tribunal took the dependency as Rs.1300/- per month and applied the multiplier of '16'. However, it has given no reasons for assessing the dependency as Rs.1300/- per month. The deceased was survived by his wife, four minor children and widowed mother, who were dependent upon him. Therefore, keeping in view the number of dependents, it would be safe to calibrate the dependency on the basis of the unit system. Since the salary of the deceased was Rs.2667/- per month and the total number of units of the family comes to '10', a single unit would be of Rs.266/-. With the death of the earning member, two units would be reduced leaving eight units in all. Thus, the total dependency would come to $\text{Rs.}266 \times 8 = \text{Rs.}2128/-$, when rounded off, it would be Rs.2130/- per month. The age of the deceased was 42 years at the time of accident and, therefore, the multiplier of '16' applied by the Tribunal is just and adequate. The claimants are accordingly held entitled to a total compensation of Rs.4,08,960/- ($2130 \times 12 \times 16$).

Shri Ravinder Arora, learned counsel for respondent no.3 contended that the liability of the Insurance Company was confined to the statutory liability of Rs.15,000/- which had been affirmed by the Supreme Court of India on an appeal filed by it.

Faced with this prospect, Shri Jaswant Jain, learned counsel for

the appellants relied upon the judgment of the Supreme Court reported as 2001 A.C.J. 1 – Oriental Insurance Co.Ltd. Versus Cheruvakkara Nafeessu and others to contend that the liability to pay the enhanced amount of compensation shall be that of the Insurance Company in the first instance and that the recovery rights could be granted to it against the owner and driver of the offending vehicle.

On due consideration of this aspect of the matter, the contention of the learned counsel for the appellants appears to be correct and accordingly, it is directed that in the first instance, the Insurance Company shall be liable to pay the enhanced amount of compensation to the claimants along with interest at the rate of 9% per annum from the date of the petition till the date of realisation. It is further directed that the Insurance Company shall be at liberty to recover the amount so paid in excess of Rs.15,000/- from the RSRTC, the owner of the offending bus.

Although there is nothing on record, yet, I am of the view that the minor children of the deceased must have become major by now. Therefore, I deem it appropriate to direct that the enhanced amount of compensation along with interest be disbursed to the claimants in the following ratio:-

- (i)Widow - 40%
- (ii)Widowed mother - 15%
- (iii)Four Children - Remaining 45% in equal shares.

Resultantly, the appeal is allowed in the aforesaid terms and the award of the Tribunal is modified to the extent indicated above.

September 27,2006
“SCM”

(Mahesh Grover)
Judge

